

**REAL ESTATE CONTRACTUAL FORMS ADVISORY COMMITTEE
MINUTES
March 30, 2006**

PRESENT: Casey Clickner, Tom Feiza, Richard Hinsman, Michael Holloway, Michael Mach, Scott Minter, Mary Pangman Schmitt, Richard Staff, Peter Sveum; Jennifer McGinnity (via telephone until 11:20 a.m.)

ABSENT: Margaret Henningsen

STAFF: Tim Wellnitz, Bureau Director; William Black, Legal Counsel; Roxanne Peterson, Direct Licensing Coordinator; Nicole Goodman, Bureau Assistant; Other Department staff were present for portions of the meeting

GUESTS: George Russell, Wisconsin Legal Blank, J.R. Siewert, Realtor, Kevin King, WRA, Tracy Rucka, WRA, Debbi Conrad, WRA, Cori Lamont, WRA

CALL TO ORDER

Peter Sveum, Chair, called the meeting to order at 9:05 a.m. A quorum of 10 members was present.

ADOPTION OF AGENDA

MOTION: Rick Staff moved, seconded by Mary Pangman Schmitt, to approve the agenda as published. Motion carried unanimously.

WELCOME AND INTRODUCTIONS

Secretary Celia Jackson welcomed the Advisory Committee members and shared her reasons for appointing them to the Committee.

Secretary Jackson advised that the Department has an open door policy. The Committee's main Department contact is Tim Wellnitz, Director for the Bureau of Business and Design Professions.

Tim Wellnitz explained that the Committee is advisory to the Secretary and that the Secretary has the final decision-making authority on issues regarding the State-approved real estate forms which are the property of the Department and State of Wisconsin.

INTRODUCTIONS

Secretary Jackson introduced Paul Peshek and advised that Mr. Peshek's role during the course of the meeting is to act as a facilitator. Mr. Peshek is employed by the Department of Health and Family Services.

Committee members introduced themselves, provided background information about them and shared a core value they felt they brought to the Committee.

PARAMETERS, SCOPE AND MISSION OF THE COMMITTEE

The Committee discussed the parameters, scope and mission of the Advisory Committee.

Paul Peshek highlighted the three main rules that Committee members should follow:

- One speaker at a time.
- Do homework.
- Respectfully disagree.

The mission of the Committee is to advise and provide recommendations to the Secretary on issues relating to the revisions to the State-approved real estate contractual forms. The scope of the Committee is to review and revise the forms to appropriately reflect the revisions to Chapter 452, Stats., and to the current real estate practice.

GENERAL DEPARTMENT OF REGULATION AND LICENSING POLICY & PROCEDURE REVIEW WITH BOARDS

Tim Wellnitz explained the Department's policies and procedures relating to the following.

Agendas and Addendum Policy

The Committee received a copy of Kimberly Nania's January 4, 2006, memo regarding the agenda and addendum policy. Tim Wellnitz advised that the goal of the Department is to only post addendums that are of an urgent nature. If a Committee member would like a topic added to the agenda, the member should contact Tim Wellnitz.

Quorum Confirmation Policy

Tim Wellnitz advised that Committee members should inform the Bureau Director of any meeting dates in which they will not be able to attend. If the Bureau Director does not hear from a Committee member, the Bureau Director will assume that the Committee member will be attending the scheduled meeting.

A quorum check will not be conducted prior to each scheduled Committee meeting. The only time the Bureau Director will conduct a quorum check will be if two or more Committee members contact the Bureau Director indicating they will not be able to attend the upcoming scheduled meeting.

Role and Responsibilities of Advisory Committee Members

The Committee reviewed its role and responsibilities. It discussed what makes a successful Committee member; how to deal with various problems associated with the volatile world of meetings; and the six steps to every motion.

Hotel Reservations Policy & Hotel No-Show Policy

Tim Wellnitz explained that if a Committee member would need a hotel reservation, the Committee member should contact him so that the Department can make the reservation. Committee members cannot make hotel reservations on their own. The State guideline states that a Committee member is entitled to a hotel reservation if the Committee member must leave his home base before 6:00 a.m. in order to be in attendance at the start of the meeting.

Mr. Wellnitz reported that the Department has selected the Comfort Inn & Suites at 4822 E. Washington Ave in Madison for all 2006 hotel reservations.

If a Committee member is not going to use the reserved hotel room, it is the responsibility of the Committee member to cancel the room by calling the hotel themselves. If the hotel room is not cancelled, the Committee member may be responsible to pay the hotel bill as a no-show.

State of Wisconsin Pocket Travel Guide

The Committee received a copy of the most recent OSER "Pocket Travel Guide".

NEW AGENCY LAW REVIEW

William Black, Legal Counsel, reviewed the revised Chapter 452, Stats., and advised that the changes were designed to reflect an approach to modernize and update the Statute to reflect current real estate practice.

The revised law provides the following new concepts:

- Allows a broker entity to represent both the buyer and seller through an employee in a transaction and provide full negotiation services to both participants.
- A limited service broker will be able to shape via contract with a client the level of services that will be given.
- Allows for a new concept of "negotiate" which will affect the entry point of a relationship and the exit point of a relationship with a broker.
- The duties regarding a transaction have been organized and reflected in the statute slightly differently.
- The issue of "sub-agent" and "sub-agency" will need to be dealt with in the definition section.

CURRENT CONTRACTUAL FORMS

The Committee received the complete set of current State-approved contractual forms. Members discussed their concerns with the forms and identified areas that may need to be revised based on the revised law.

DISCUSSION REGARDING PRIORITIZATION AND PROCEDURES FOR REVISION OF THE CONTRACTUAL FORMS

The Committee discussed procedures for prioritizing the forms for revision based on which forms will be most impacted by the Chapter 452, Stats., revisions.

The Committee agreed upon the following:

- The forms should be reviewed by the entire Committee at the same time rather than breaking into sub-groups or teams who would work on specific issues and/or forms and report back to the entire Committee.
- The listing forms and buyer/agency forms should be the first forms to be revised.
- Form WB-1 Residential Listing Contract – Exclusive Right to Sell would be the first contractual form worked on by the Committee.
- Once the Committee gets further into the process of revising WB-1, the Committee can then determine whether to work next on the addendums or to concentrate on another Listing Contract.
- The Committee should have the option to invite specialists in a specific industry practice, i.e., farms, to the Committee meeting to obtain their knowledge and expertise when revising specialized forms.

DISCUSSION REGARDING DRAFTING AND FORMATTING OF FORMS

The Committee discussed the drafting and formatting process. Tim Wellnitz advised that Bill Black will be the Department's drafter and formatter. The Committee's conceptual or specific discussions will be put into draft language and brought back to the Committee for review and revision. All Committee member opinions are welcome in the drafting and formatting process.

The Committee members requested that they receive the drafts they will be reviewing via e-mail, if they are not ready by the mailing of the agenda.

SCHEDULE FUTURE COMMITTEE MEETING DATES

The next Committee meeting was scheduled for June 7, 2006, from 10:00 a.m. to 2:00 p.m., at 1400 E. Washington Avenue, Madison.

AGENCY LAW AND ADDENDUM

The Committee discussed how to deal with the agency law and agency disclosure language in the Buyer-Agency Listing form. It was agreed that practitioners will need to use an addendum to modify the language until the new form is ready, which will be sometime in 2007.

MOTION: Richard Hinsman moved, seconded by Mary Pangman Schmitt, to recommend to the Secretary that the Department work with the WRA to prepare some sort of language to reflect the new agency law that can be used by licensees in the appropriate form for the Committee's review at the next meeting. Motion carried unanimously.

REVIEW AND DISCUSSION OF WB-1 RESIDENTIAL LISTING CONTRACT – EXCLUSIVE RIGHT TO SELL

The Committee began reviewing "WB-1 Residential Listing Contract – Exclusive Right to Sell" and discussed concepts relating to how the forms should be revised to better reflect the current real estate practice and the revisions to Chapter 452, Stats.

Issues discussed:

- Delivery language to reflect email delivery.
- Occupancy.
- Property included in listing price.
- "Working condition" of appliances.
- Items included and not included in the listing price.
- Condition of title.
- Title evidence and merchantable title.
- Seller representations regarding property conditions.
- Commissions.
- Fee Splits.
- Limited agency.
- Cooperating with other brokers.
- Earnest money.
- Condition report.
- Whether to initial each page.

Bill Black and Rick Staff will work together to prepare an initial draft which will incorporate the concepts discussed by the Committee. The Committee will review the draft at the next meeting and have the opportunity to provide input and make suggested changes.

ADJOURNMENT

MOTION: Richard Hinsman moved, seconded by Tom Feiza, to adjourn the meeting at 2:50 p.m. Motion carried unanimously.